

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SOFTVIEW LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 10-389-LPS
)	(CONSOLIDATED)
APPLE INC., et al.,)	
)	
Defendants.)	

JOINT STATUS REPORT

On April 22, 2014, this Court entered the parties’ “Stipulation and Proposed Order to Extend Stay” until the resolution of SoftView’s appeal of the Patent Trial and Appeal Board’s (“PTAB”) final written decisions holding all of the challenged claims of SoftView’s patents unpatentable. (D.I. 1110.) On February 9, 2015, the Federal Circuit affirmed the PTAB’s decisions. Exhibits 1 and 2 (attached). The Federal Circuit’s mandates issued on April 2, 2015. Exhibits 3 and 4 (attached). Pursuant to this Court’s Order, the parties submit their joint status report.

Defendants’ Proposal

Early in the case, this Court limited SoftView to the assertion of a total of 20 claims across both patents. (D.I. 250 at 12.) Following this Court’s Order, SoftView identified the 20 claims it chose to assert. In reliance thereon, Defendants Kyocera and Motorola petitioned for *inter partes* review of those claims before the PTAB.

Because the PTAB held, and the Federal Circuit affirmed, that all of the claims asserted by SoftView in this case are unpatentable, by operation of law, those claims will be canceled in due course by the USPTO. 35 U.S.C. § 318(b). Defendants thus propose that this case be

dismissed with prejudice in its entirety, or, alternatively, that the stay be lifted for the sole purpose of permitting Defendants to file their motion to dismiss this case with prejudice that is attached as Exhibit 5, as well as any motions seeking costs and/or attorneys' fees, if appropriate.

SoftView's request to continue the stay while the remainder of the claims in SoftView's patents wind their way through multiple USPTO reexamination proceedings should be denied. This Court's Order limiting SoftView to the assertion of 20 patent claims did not permit SoftView to assert additional claims if it lost on the 20 claims it chose to assert. Moreover, the continued stay proposed by SoftView would burden the Court and the parties for years to come, as SoftView previously represented to this Court that the reexamination proceedings "are likely to take 6.5 to 8 years to reach a final decision." (D.I. 174 at 8).

Plaintiff's Proposal

Defendants have misstated the facts and SoftView's position. SoftView agrees that the claims found to be unpatentable by the PTAB should be dismissed with prejudice.¹ However, Defendants overreach in seeking dismissal with prejudice of *all* claims.

The PTAB held unpatentable only the claims challenged in IPR, it did not hold "all of the claims asserted by SoftView" unpatentable. As Defendants note, SoftView was ordered to select 20 claims from its originally asserted claims. But Defendants were not similarly limited in the number of claims they could challenge in IPR or in the number of IPRs they could bring. If Defendants wished to seek cancellation of all of the claims of SoftView's patents through IPR, they could have done so. Having chosen not to, they should not now be heard to complain that fewer than all of SoftView's claims will be canceled.

SoftView has many remaining patent claims, and those claims are subject to on-going

¹ Claims 1, 33, 36, 43, 48, 51, 52, 58, 59, 66, 118, 138, 139, 149, 183, 252, 283, and 317 of U.S. Patent No. 7,461,353 and claims 30, 31, 40, 49, 43, 52, 55, 59, 72, and 75 of U.S. Patent No. 7,831, 926.

reexaminations (which were instituted by certain Defendants). *See* Reexamination Nos. 95/000,634; 90/009,994; 95/002,132; 95/000,635; 90/009,995; and 95/002,126 (the "Pending Reexaminations"). There has not yet been a final ruling on the patentability of SoftView's remaining claims in the Pending Reexaminations. And Defendants fail to explain how a continued stay would "burden" this Court during the pendency of the Reexaminations. Indeed, the opposite is the case: SoftView's proposal would halt all proceedings in this Court until the Pending Reexaminations are resolved, while Defendants' proposal would burden this Court with motion practice. Moreover, Defendants themselves have previously filed motions to stay the case pending the Reexaminations (as well as the subsequent motion to stay the case pending the IPRs), belying the notion that continuing the stay would be a "burden" on Defendants. *See, e.g.*, D.I. 160; D.I. 159; D.I. 185; D.I. 940; D.I. 981.

SoftView accordingly proposes that the existing stay remain in effect with respect to the remaining claims until resolution of the Pending Reexaminations, at which time the parties shall submit to the Court a joint status report, including their proposals as to whether and how this case should proceed.

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